



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/153197

PRELIMINARY RECITALS

Pursuant to a petition filed October 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 04, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner's request for a tilt/recline feature on her new wheel chair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On August 16, 2013, Kneuppel Health Care Services submitted a prior authorization request, on behalf of the Petitioner, for an electric wheelchair and various accessories at a cost of \$28,821.00. (Exhibit 4, pgs. 4-6)
3. On September 16, 2013, DHS sent the Petitioner and Kneuppel Health Services notices advising them that some of the items requested were approved, while others were not. (Exhibit 4, pgs. 139-148)
4. The items that were denied were labeled as follows:
 - (04) Wheel Chair component Accessory Not Otherwise Specified – Power Lift Seat
 - (08) Wheel Chair component Accessory Not Otherwise Specified – Remote
 (Exhibit 4, pgs. 139-148)
5. The items that were approved with modifications were labeled as follows:
 - (03) Power Seat Tilt; Power Tilt and Recline
 - (11) Power Leg Elevation; Power Center Mount Elevators
 - (20) Wheel Chair Manual Swing Away Head Rest Mounting Hardware
 (Exhibit 4, pgs. 139-148)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 28, 2013. (Exhibit 1)
7. The Petitioner suffers from multiple sclerosis and ambulates using a power wheelchair. (Exhibits 3 and 4)
8. The Petitioner’s current wheelchair does not go in reverse. (Testimony of Petitioner; Observation of ALJ at hearing)
9. Petitioner’s current wheelchair has a tilt feature, but no recline feature. (Testimony of Petitioner; Observation of ALJ at hearing; Exhibit 4, pg.9)
10. Since 2005, the Petitioner has suffered recurring pressure sores and her bottom has become horribly scarred. (See Photos, Exhibit 2)
11. Sometime in October 2013, the Petitioner was hospitalized due to pressure sores on her bottom. She was sent to recover in a rehab facility, but returned home in December 2013. (Testimony of Petitioner)
12. Petitioner was previously treated for pressure sores on her bottom in March and April 2013. (Exhibit 2 and Exhibit 4)
13. The Petitioner tried a wheelchair with a tilt/recline feature and found that she was able to more independently shift positions to relieve the pressure on her bottom. (Testimony of the Petitioner)

DISCUSSION

Wis. Admin. Code DHS §101.03(5) defines “durable medical equipment” as, “equipment which can withstand repeated use, is primarily used for medical purposes, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.”

Per Wis. Admin. Code DHS §107.24(2)(c)(8), wheel chairs are considered durable medical equipment and are a covered service:

(c) *Categories of durable medical equipment.* The following are categories of durable medical equipment covered by MA

...(8) Wheelchairs. These are chairs mounted on wheels usually specially designed to accommodate individual disabilities and provide mobility. Examples are a standard weight wheelchair, a lightweight wheelchair and an electrically-powered wheelchair.

However, per Wis. Admin. Code DHS §107.24(3)(a), items listed in the Wisconsin Durable Medical Equipment (DME) and medical supplies indices as needing prior authorization, must in fact, go through the prior authorization process.

Petitioner filed an appeal, because she disputes DHS's modification of her request for a Power Seat Tilt; Power Tilt and Recline feature on her new wheelchair. It should be noted that the code used on the prior authorization request for this feature was E1002. The DME Index states that this product requires prior authorization. *See the on-line index at <https://www.forwardhealth.wi.gov>*

In addition, under Wis. Admin. Code DHS §107.24(3)(f), if a person has Medicare part B coverage, the purchase of any item which is not covered by Medicare- part B, must also receive prior authorization. (It should be noted that Medicare – Part B normally covers the cost of wheelchairs. See http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/pmdfactsheet07_quark19.pdf)

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

According to DHS, the Petitioner is a Medicare Recipient. The letter from the Department of Health Services, Office of the Inspector General (OIG), Exhibit 3, indicated that the prior authorization request for the tilt/recline feature was made prematurely for two reasons:

- 1) Because Medicaid is a payer of last resort and it was unclear whether Medicare was going to cover the features that would allow the Petitioner to tilt/recline in her wheelchair. In addition, it was the understanding of the OIG that that Knueppel Health Care Services was in the process of seeking Medicare Part B coverage for the tilt/recline feature.

Wis. Admin. Code DHS §106.03(6) states that a provider, “shall accept assignment of the recipient’s part B medicare benefits, if the service provided is, in whole or in part, reimbursable under medicare part B coverage. All services provided to dual entitles which are reimburseable under medicare part B shall be billed to medicare. In this subsection ‘dual entitlee’ means an MA recipient who is also eligible to receive part B benefits under medicare.”

This is consistent with the policy that Medicaid is a payer of last resort. Indeed, Wis. Admin. Code DHS §106.03(7)(b) states, “Before submitting a claim to MA for the same services, a provider shall properly seek payment for the services provided to an MA recipient from medicare or, except as provided in par. (g), another health care plan if the recipient is eligible for services under medicare or the other health care plan.”

It is still unclear from the record whether Knueppel Health Care Services succeeded in obtaining Medicare coverage for the tilt/recline equipment requested for Petitioner’s wheelchair. Consequently,

DHS was correct in modifying Medicaid coverage of the tilt feature, since it was unclear whether Medicare part B was going to cover the equipment.

As such, at the time the OIG was reviewing her case, her health and her living situation was in flux and the OIG /DHS correctly determined that Kneuppel Health Care Services prior authorization request was premature.

With regard to Petitioner's health, she has indeed, suffered recurring pressure sores on her buttocks and she has undergone repeated hospitalizations to treat those sores. Exhibit 2 documents in photographs the serious extent of the pressure sores that plague the Petitioner, due to her past inability to independently shift positions to relieve the pressure. Thus, the medical necessity for the tilt/recline equipment seems obvious, as Petitioner needs to be able to shift positions to maintain her skin integrity on her bottom. In addition, it would seem more cost-effective to pay for the tilt/recline equipment, rather than pay for repeated hospitalizations. However, Kneuppel Health Care Services must first resolve coverage with Medicare before seeking coverage from Medicaid.

Petitioner should note that there is no penalty for submitting a new prior authorization request. If Medicare Part B has not covered the requested tilt/recline feature, Kneuppel Health Care Services can reapply to Medicaid for prior authorization for the equipment.

Kneuppel Health Care Services will NOT receive a copy of this decision from the Division of Hearings and Appeals. As such, the Petitioner might wish to provide a copy of this Decision to them.

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner's request for a tilt/recline feature on her new wheelchair.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

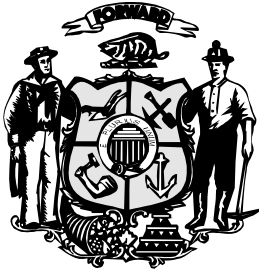
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of April, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 2, 2014.

Division of Health Care Access and Accountability